

# Senate Daily Reader

# Friday, January 23, 2004

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# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

394J0073

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 1** - 01/21/2004

Introduced by: Senators Schoenbeck, Abdallah, Ham, Kelly, Moore, Napoli, and Reedy and Representatives Sebert, Burg, Engels, Fryslie, Garnos, Hennies, Murschel, O'Brien, Rhoden, Rounds, Schafer, and Valandra at the request of the Interim Committee on Department of Corrections Agency Review

1 FOR AN ACT ENTITLED, An Act to provide for a Criminal Code Revision Commission and  
2 to declare an emergency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. The Executive Board of the Legislative Research Council shall establish a  
5 Criminal Code Revision Commission during the 2004 legislative interim. The commission shall  
6 consist of fifteen members. Thirteen members shall be appointed by the Executive Board. Three  
7 shall be state senators, no more than two of whom shall be members of the same party. Six shall  
8 be state representatives, no more than four of whom shall be members of the same party. Two  
9 shall be distinguished current members of the State Bar of South Dakota with extensive  
10 experience as a state's attorney or criminal prosecutor. Two shall be distinguished current  
11 members of the State Bar of South Dakota with extensive experience as a public defender,  
12 court-appointed attorney for indigent defendants, or criminal defense attorney. No more than  
13 three of the nonlegislator members of the commission, who are appointed by the Executive  
14 Board, shall be from the same party. Before making the appointments of the nonlegislators, the



1 Executive Board shall solicit the advice and recommendations of the State Bar of South Dakota,  
2 the South Dakota Trial Lawyers Association, the South Dakota States Attorney's Association,  
3 and other organizations that may wish to participate in the appointment process.

4 Section 2. Two members of the commission shall be appointed by the Chief Justice of the  
5 Supreme Court. Each shall be either a current or retired circuit court judge or a retired Supreme  
6 Court Justice. Each shall have extensive experience in criminal law.

7 Section 3. The Criminal Code Revision Commission shall carefully examine the crimes, the  
8 elements of crimes, and the punishment of crimes, with special reference to legislative revisions  
9 made since the conclusion of the work of the previous Criminal Code Revision Commission,  
10 to ensure that the elements of each crime are clearly and precisely described, that each crime is  
11 necessary and appropriate to the maintenance of public order and a well regulated society, and  
12 that the punishment prescribed for each crime is just and proportionate. The scope of authority  
13 of the commission is not limited to Title 22, but specifically includes all drug offenses and  
14 driving under the influence offenses. Moreover, the commission may, at its discretion, examine  
15 any offense, whether inherently criminal, procedural, or administrative, if the offense is  
16 punishable as a felony or misdemeanor, or by the imposition of any fine or civil penalty.

17 Section 4. The Criminal Code Revision Commission shall embody its recommendations for  
18 amendment of the criminal code in draft legislation and submit its recommendations to the  
19 Executive Board no later than the Executive Board's final interim meeting.

20 Section 5. Whereas, this Act is necessary for the support of the state government and its  
21 existing public institutions, an emergency is hereby declared to exist, and this Act shall be in  
22 full force and effect from and after its passage and approval.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

178J0045

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 2 - 01/21/2004**

Introduced by: Senators Schoenbeck, Abdallah, Kelly, Napoli, and Reedy and  
Representatives Sebert, Burg, Engels, Garnos, Hennies, Murschel, O'Brien,  
Rhoden, Rounds, Schafer, and Valandra at the request of the Interim  
Committee on Department of Corrections Agency Review

1 FOR AN ACT ENTITLED, An Act to revise the style and form of certain provisions relating  
2 to the Department of Corrections and to correct certain errors and omissions.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 24-1-1 be amended to read as follows:

5 24-1-1. The state penitentiary ~~shall be~~ is the general prison of this state for the punishment  
6 and reformation of offenders ~~wherein~~ to which such offenders as may be committed ~~thereto~~,  
7 according to law, by any court of this state, shall be confined, employed, and governed in the  
8 manner ~~hereinafter~~ provided by law.

9 Section 2. That § 24-1-12 be amended to read as follows:

10 24-1-12. All process to be served within the precincts of the state penitentiary, either upon  
11 ~~convicts~~ inmates or upon persons or officers employed within the precincts thereof, except upon  
12 the warden, shall be served and returned by the warden, ~~or his~~ personally or by a designee. All  
13 officers and employees of the penitentiary ~~shall be~~ are exempt from serving upon juries in any  
14 state court.



1 Section 3. That § 24-1-16 be amended to read as follows:

2 24-1-16. The warden ~~shall have power to~~ may make all purchases for the penitentiary on  
3 such conditions and in such manner as in ~~his~~ the warden's opinion will best promote the interest  
4 of the state, ~~except as may be otherwise specifically provided by law.~~

5 Section 4. That § 24-2-9 be amended to read as follows:

6 24-2-9. Any inmate violating the rules or institutional policies ~~may be~~ is subject to any one  
7 or more of the following disciplinary sanctions:

8 (1) Withholding of statutory time for good conduct;

9 (2) Punitive confinement;

10 (3) Imposition of fines;

11 (4) Restriction of privileges;

12 (5) Loss of work or school privileges;

13 (6) Additional labor without compensation;

14 (7) Referral to various programs;

15 (8) Transfer to a more secure housing unit;

16 (9) Change in classification status.

17 ~~There may be no~~ No corporal punishment may be inflicted upon inmates in the penitentiary.

18 Section 5. That § 24-2-10 be amended to read as follows:

19 24-2-10. Any person sentenced to imprisonment in the state penitentiary is under the  
20 protection of the law, and any injury to ~~him~~ such person not authorized by law is punishable in  
21 the same manner as if ~~he~~ the person were not convicted or sentenced.

22 Section 6. That § 24-2-12 be amended to read as follows:

23 24-2-12. ~~Every~~ Any inmate against whom the disciplinary sanction of punitive confinement  
24 has been given for violating any of the rules or policies of the Department of Corrections, unless

1 otherwise determined by the secretary of corrections, shall be housed in ~~the adjustment center~~  
2 a segregation section of the penitentiary for a such period ~~deemed~~ as may be necessary for the  
3 best interests of discipline, justice, rehabilitation, and the protection of ~~self~~ the inmate and  
4 others. The disciplinary board, established by rules promulgated by the Department of  
5 Corrections, may take away time granted for good conduct pursuant to § 24-5-1 for violating  
6 any of the rules or policies of the Department of Corrections, following a hearing and subject  
7 to the approval of the warden.

8 Section 7. That § 24-2-14 be amended to read as follows:

9 24-2-14. No alcoholic ~~beverages~~, beverage, marijuana, or weapon, as defined in subdivision  
10 22-1-2(10), may be possessed by any inmate of the state penitentiary. No prescription or  
11 nonprescription ~~drugs~~ drugs, controlled ~~substances~~ substance as defined by chapter 34-20B,  
12 ~~marijuana, weapons as defined in subdivision 22-1-2(10)~~, or any article of indulgence may be  
13 possessed by any inmate of the state penitentiary except by order of a physician, physician  
14 assistant, or nurse practitioner, as defined in chapters 36-4, 36-4A, and 36-9A, respectively,  
15 which order shall be in writing and for a definite period. ~~A~~ Any violation of this section  
16 constitutes a felony pursuant to the following schedule:

- 17 (1) Possession of any alcoholic ~~beverages~~ beverage or marijuana is a Class 6 felony;  
18 (2) Possession of any prescription or nonprescription ~~drugs~~ drug or controlled ~~substances~~  
19 substance is a Class 4 felony;  
20 (3) Possession of a weapon as defined in subdivision 22-1-2(10) is a Class 2 felony.

21 Section 8. That § 24-2-15 be amended to read as follows:

22 24-2-15. ~~Any~~ If any inmate, convicted under the laws of this state, ~~who, by~~ has demonstrated  
23 continued exceptional good behavior, or is in failing health, or for some other good and  
24 sufficient reason in the interest of justice ~~may be compensated therefor in the discretion of,~~ the

1 Governor, upon the recommendation of the secretary of corrections ~~by diminishing his period~~  
2 ~~of confinement,~~ may diminish the inmate's period of confinement.

3 Section 9. That § 24-2-17 be amended to read as follows:

4 24-2-17. The warden of the penitentiary shall keep a true record of the conduct of each  
5 inmate, ~~specifying therein~~ and shall specify each infraction of the rules of discipline. Each  
6 inmate shall be notified of every entry on ~~his~~ the inmate's record of each such infraction of the  
7 rules of discipline and shall have thirty days to challenge the validity of the entry or the  
8 disciplinary sanction imposed by notifying the warden ~~thereof~~ to that effect. After investigation,  
9 the warden may remove the entry or modify the imposed disciplinary sanction. Such record shall  
10 be used whenever the question of any inmate's eligibility for parole or discharge ~~shall arise~~  
11 ~~under and by virtue of~~ arises pursuant to § 24-5-1.

12 Section 10. That § 24-2-18 be amended to read as follows:

13 24-2-18. The warden may, at any time prior to an inmate's final discharge, consider  
14 recommendations of the disciplinary committee pertaining to the withholding of statutory time  
15 granted for good conduct and may recommend to the secretary of corrections that the reduction  
16 of time for good conduct ~~under and by virtue of~~ pursuant to § 24-5-1 be withheld in full or in  
17 part. The warden may also, at any time prior to the inmate's final discharge, recommend to the  
18 secretary of corrections that the reduction of time for good conduct ~~under~~ pursuant to § 24-5-1  
19 be withheld in full or in part for conduct evincing an intent to reoffend or commit further  
20 offenses when discharged or for any person convicted of a sex crime within the meaning of  
21 § 22-22-30 who fails to fully cooperate with all treatment offered.

22 The secretary shall, after hearing, fix the amount of time earned by good conduct to be  
23 withheld. ~~The, which~~ decision of the secretary is final.

24 Section 11. That § 24-2-20 be amended to read as follows:

1       24-2-20. Notwithstanding the provisions of § 24-1-26, ~~the records and any other facts that~~  
2 ~~may have come to the knowledge of the warden and the warden's opinion,~~ when requested,  
3 regarding the fitness of any inmate, sentenced as an adult, for a modification of sentence, parole,  
4 pardon, or early release ~~shall be furnished only,~~ the warden shall furnish only to the sentencing  
5 court, the secretary of corrections, the Board of Pardons and Parole, or the Governor,  
6 respectively, any requested record, fact, or opinion in the warden's possession or knowledge.  
7 The Department of Corrections may release the following information on any inmate or parolee  
8 sentenced as an adult for purposes of community and victim notification pursuant to  
9 subdivisions 23A-28C-1(10) and (12), §§ 23A-28C-5, 24-15-8.1, 24-15-8.2, and 24-15A-22,  
10 and to other governmental entities as defined in § 24-2-20.1:

- 11       (1) Name and any known aliases;
- 12       (2) Date of birth;
- 13       (3) Race and gender;
- 14       (4) Location of incarceration;
- 15       (5) Community of residence;
- 16       (6) Custody status and conditions of supervision;
- 17       (7) Any Department of Corrections sentence identification number;
- 18       (8) Any crime of conviction;
- 19       (9) Number of felony convictions;
- 20       (10) Sentence, time suspended, jail time credit, and revoked good-time credits;
- 21       (11) Offense, sentence, admission, release, and parole eligibility dates;
- 22       (12) Dates of pending hearings and final determinations of parole, suspended sentence,  
23             pardon, and commutation hearings;
- 24       (13) Status as an inmate, parolee, or person who has completed a prison term;



- 1 (14) County of conviction;
- 2 (15) Plea;
- 3 (16) Citizenship status; and
- 4 (17) Birth town, state, and country.

5 Section 12. That § 24-2-20.1 be amended to read as follows:

6 24-2-20.1. As used in § 24-2-20, the term, governmental entities, means any department,  
7 division, or other public agency of ~~a municipality~~ any municipal, county, state, or ~~nation~~  
8 national government.

9 Section 13. That § 24-2-22 be amended to read as follows:

10 24-2-22. Any employee or other person who delivers or procures to be delivered, or ~~shall~~  
11 ~~have in his possession~~ possesses with the intention to deliver, to any inmate in the state  
12 penitentiary, or deposits or conceals in or around any facility or place used to house inmates, or  
13 in any mode of transport entering upon the grounds of any facility or place and its ancillary  
14 facilities used to house inmates, any article ~~or thing whatever contrary~~ which is unlawful for an  
15 inmate to possess pursuant to state law or the rules of the Department of Corrections with the  
16 intent that any inmate ~~shall~~ obtain or receive ~~the same~~ such article, is guilty of a Class 6 felony.

17 Section 14. That § 24-2-25 be amended to read as follows:

18 24-2-25. The warden of the state penitentiary may extend the limits of the place of  
19 confinement of an inmate, ~~who he~~ if the warden has reasonable cause to believe that the inmate  
20 will honor ~~his trust by authorizing him under~~ the warden's prescribed conditions to visit or be  
21 housed in specifically designated places within the state.

22 Section 15. That § 24-2-26 be amended to read as follows:

23 24-2-26. ~~Any article or item which is not specifically authorized by law or by the~~ The  
24 ~~warden and in the personal possession or effects of any inmate shall be confiscated and disposed~~

1 may confiscate and dispose of, in the manner as in the opinion of the secretary of corrections  
2 will best promote the interest of the state, any article in the personal possession of any inmate  
3 which is unlawful for an inmate to possess pursuant to state law or the rules of the Department  
4 of Corrections. ~~Unauthorized~~ Any unauthorized money which ~~has been~~ is confiscated shall be  
5 deposited in the state general fund.

6 Section 16. That § 24-2-27 be amended to read as follows:

7 24-2-27. The Department of Corrections may establish and maintain facilities, programs,  
8 or services outside the precincts of the penitentiary proper and contract with other governmental  
9 entities for the care and maintenance of inmates committed to the penitentiary. However, the  
10 court may not order that an inmate be housed in any particular facility nor may the court order  
11 that an inmate be placed in a specific program or receive specific services. No inmate has any  
12 implied right or expectation to be housed in any particular facility, participate in any specific  
13 program, or receive any specific service, and ~~all inmates are~~ each inmate is subject to transfer  
14 from any one facility, program, or service at the discretion of the warden of the penitentiary. ~~An~~  
15 Any escape from the penitentiary or from a facility, program, or service maintained outside the  
16 penitentiary is ~~considered~~ a violation of § 22-11A-2. Venue for a prosecution for an escape from  
17 any facility ~~shall be in~~ is the county where the acts constituting the escape take place, ~~unless~~  
18 ~~otherwise provided by law.~~

19 Section 17. That § 24-2-28 be amended to read as follows:

20 24-2-28. ~~An~~ Each inmate under the jurisdiction of the Department of Corrections is liable  
21 for the cost of the inmate's confinement which includes: room and board charges; medical,  
22 dental, optometric, and psychiatric services charges; vocational education training; and  
23 alcoholism treatment charges.

24 ~~Consideration may be given the following factors:~~ However, if the secretary of corrections

1 determines after considering the net income, net worth, number of dependents, and any existing  
2 obligations. ~~If the secretary of corrections determines~~ of the inmate, that the inmate is unable  
3 to pay, the secretary may waive all or part of the payment for the costs of the inmate's  
4 confinement.

5 Section 18. That § 24-2-29 be amended to read as follows:

6 24-2-29. ~~An~~ Each inmate is liable for ~~court-ordered~~ court-ordered fines, costs, fees,  
7 sanctions, and restitution and any obligation incurred while under the jurisdiction of the  
8 Department of Corrections including those provided for in §§ 24-2-28, 24-7-3, 24-8-9,  
9 24-11A-19, 24-15-11, 24-15A-24, and 23A-35B-4 and any other charge owed to the state.  
10 Disbursement shall be made from an inmate's institutional account to defray the inmate's  
11 obligation, regardless of the source of the inmate's funds, including moneys in the inmate's  
12 institutional account pursuant to § 24-2-5 and wages earned by the inmate pursuant to §§ 24-4-9,  
13 24-7-3(3), 24-7-6, 24-8-8, and 24-11A-20.

14 Section 19. That § 24-2-30 be amended to read as follows:

15 24-2-30. It is ~~hereby declared to be a~~ the policy of the State of South Dakota that each  
16 inmate of a Department of Corrections facility shall be employed or work in some productive  
17 capacity ~~provided if~~ if there is a suitable work situation. ~~An~~ Any inmate may be required to work  
18 without compensation as a condition of confinement.

19 Section 20. That § 24-4-8 be amended to read as follows:

20 24-4-8. Any person who has ~~been given~~ custody of an inmate pursuant to § 24-4-7 shall  
21 immediately report the unauthorized absence of any inmate and shall promptly return any inmate  
22 to the custody of the warden if ordered to do so.

23 Section 21. That § 24-5-1 be amended to read as follows:

24 24-5-1. Every inmate sentenced for any term less than life, or who has had an indeterminate

1 sentence set at a term of years, or who has had a life sentence commuted to a term of years, and  
2 subject to the provisions of §§ 24-2-17 and 24-2-18, is entitled to a deduction of four months  
3 from his or her sentence for each year and pro rata for any part of a year for the first year to the  
4 tenth, and six months for the tenth year and for each year thereafter until the expiration of the  
5 period of the sentence as pronounced by the court, for good conduct.

6 Section 22. That § 24-5-2 be amended to read as follows:

7 24-5-2. Whenever any inmate has been discharged under the provisions of § 24-5-1, ~~he~~ the  
8 inmate shall at the time of ~~his~~ discharge be considered as restored to the full rights of  
9 citizenship. At the time of the discharge of any inmate under the provisions of this chapter, ~~he~~  
10 the inmate shall receive from the secretary of corrections a certificate stating that ~~he~~ the inmate  
11 has been restored to the full rights of a citizen. If an inmate is on parole at the time ~~he~~ the inmate  
12 becomes eligible for discharge, the secretary of corrections shall issue a like certificate, ~~which~~  
13 ~~shall be due notice that such~~ stating that the inmate has been restored to the full rights of a  
14 citizen.

15 The secretary of corrections shall mail a copy of the certificate to the clerk of court for the  
16 county from which the inmate was sentenced.

17 Section 23. That § 24-5-3 be amended to read as follows:

18 24-5-3. Every inmate, when discharged from the penitentiary, whether by parole, suspended  
19 sentence, or final discharge, shall be provided with suitable clothing, a sum of money to be  
20 determined by the secretary of corrections, and transportation to the place where the inmate  
21 received sentence. Any inmate who has received such money and transportation, and who is  
22 returned to the penitentiary upon revocation of ~~his~~ parole or suspended sentence, is not eligible  
23 to receive such payment or transportation upon final discharge.

24 Section 24. That § 24-5-7 be amended to read as follows:

24-5-7. Upon recommendation of the supervising agent, the Board of Pardons and Paroles may grant an early final discharge from supervision for a parolee or person serving a suspended sentence under supervision of the board if the board is satisfied that an early final discharge would be in the best interests of society and the inmate. At the time of early final discharge from supervision, the secretary of corrections shall issue a certificate of discharge pursuant to § 24-5-2. ~~An~~ No inmate is ~~not~~ entitled to an early final discharge. Neither this section nor its application may be the basis for establishing a constitutionally protected liberty, property, or due process interest in any inmate.

Section 25. That § 24-6A-1 be amended to read as follows:

24-6A-1. The ~~Springfield Correctional Facility~~ Mike Durfee State Prison, located at Springfield in Bon Homme County, is under the control of the Department of Corrections. The secretary of corrections shall appoint and set a salary for the warden of the facility. The warden of the ~~Springfield Correctional Facility~~ Mike Durfee State Prison, under the supervision of the secretary, shall have charge and custody of the facility, with all lands, buildings, furniture, tools, equipment, implements, stock, and provisions, and all other property pertaining thereto or within the precincts thereof. All officers and employees of the ~~Springfield Correctional Facility~~ Mike Durfee State Prison shall perform duties as may be required of them by the warden of the facility.

Section 26. That § 24-6A-2 be repealed.

~~24-6A-2. The Department of Corrections, established pursuant to chapter 1-15, as previously enacted, may provide for architectural services, engineering services, or other planning for the construction of a housing unit for female inmates at the Springfield Correctional Facility.~~

Section 27. That § 24-6A-3 be repealed.

~~24-6A-3. The Department of Corrections may accept and expend for the purposes of~~

1   ~~§§ 24-6A-2 to 24-6A-4, inclusive, any funds which it may obtain from federal sources, gifts,~~  
2   ~~contributions, or any other source, provided such acceptance and expenditure is approved in~~  
3   ~~accordance with § 4-8B-10.~~

4       Section 28. That § 24-6A-4 be repealed.

5   ~~— 24-6A-4. The design and construction of this project shall be under the general charge and~~  
6   ~~supervision of the Bureau of Administration as provided in § 5-14-2. The funds obtained in~~  
7   ~~§ 24-6A-3 shall be paid on warrants drawn by the state auditor on vouchers approved by the~~  
8   ~~state engineer and the secretary of the Department of Corrections.~~

9       Section 29. That § 24-6A-5 be repealed.

10   ~~— 24-6A-5. Pursuant to the provisions of § 5-12-46, the Legislature hereby authorizes the sale~~  
11   ~~and lease-back of the Springfield Correctional Facility by the South Dakota Building Authority~~  
12   ~~as described in §§ 5-12-42 and 5-12-43.~~

13       Section 30. That § 24-7-1 be amended to read as follows:

14       24-7-1. The South Dakota State Prison Industries ~~shall constitute~~ constitutes the operating  
15   organization for all of the industries now established at the state penitentiary, including the  
16   license plate plant, furniture shop, bookbindery, and sign shop, ~~and farm operations~~. The ~~same~~  
17   prison industries shall also embrace ~~all such~~ any new ~~industries as may be~~ industry that is  
18   established by the Department of Corrections at the state penitentiary or any other ~~facilities~~  
19   facility for the employment of inmate labor.

20       Section 31. That § 24-7-18 be amended to read as follows:

21       24-7-18. In the collection of past-due accounts of the prison industries, the attorney general  
22   may institute probate proceedings as a creditor of any deceased person or institute other court  
23   actions to collect ~~same~~ the past-due account, enter into any stipulation or agreement to  
24   compromise or settle ~~same~~ the past-due account, whether paid in full or not, if, in ~~his~~ the

1 attorney general's judgment, it is for the best interests of the state to do so, and make any such  
2 settlement or compromise and execute any release, partial release, discharge, satisfaction, or  
3 partial satisfaction of any lien if necessary to the settlement of the account. However, before  
4 making such settlement, ~~he~~ the attorney general shall secure the approval of the secretary of  
5 corrections to ~~same~~ the settlement.

6 Section 32. That § 24-7-19 be amended to read as follows:

7 24-7-19. The attorney general may employ such special assistant attorney or collector as ~~he~~  
8 ~~may deem~~ may be necessary to collect any delinquent accounts of the prison industries and to  
9 pay ~~him~~ such special assistant attorney or collector on a salary, fee, or contingent fee basis as  
10 ~~he the attorney general~~ may deem best ~~and determine; all.~~ All of such expense, including filing  
11 fees, sheriff's fees, court costs, traveling, expenses, and other necessary expenses of collection  
12 ~~to , shall~~ be paid out of the sums collected, or out of the prison industries revolving fund on  
13 itemized claims approved by the attorney general and the secretary of corrections; but the  
14 amount expended for such purposes from the prison industries funds may not exceed the sum  
15 of five hundred dollars.

16 Section 33. That § 24-7-32 be amended to read as follows:

17 24-7-32. All state departments shall buy license plates and licensing decals from the prison  
18 industries ~~as it may be~~ if the prison industries are able to furnish such license plates and  
19 licensing decals. The prison industries shall furnish ~~the same~~ such license plates and licensing  
20 decals at the actual cost of production, plus fifteen percent.

21 Section 34. That § 24-7-33 be amended to read as follows:

22 24-7-33. ~~The state departments~~ Any state department contracting for any of the products  
23 ~~herein~~ provided for by prison industries shall pay for such goods as provided by law, ~~and all,~~  
24 All money received for the manufacturing of products ~~as herein provided~~ shall be deposited to

1 the credit of the revolving fund provided for in this chapter.

2 Section 35. That § 24-8-1 be amended to read as follows:

3 24-8-1. The Department of Corrections may conditionally release selected inmates and may  
4 extend the limits of the place of confinement of such inmates of the state penitentiary. If the  
5 warden determines that the character and attitude of an inmate reasonably indicate that ~~he~~ the  
6 inmate may be so trusted, the warden may release and provide for continued supervision of such  
7 an inmate to work at paid employment, to seek employment, or to participate in vocational  
8 training or other educational programs in the community after such employment or program has  
9 been investigated and approved pursuant to rules promulgated by the Department of  
10 Corrections. The warden ~~at his discretion~~ may, with or without cause, terminate or suspend any  
11 such release.

12 Section 36. That § 24-8-3 be amended to read as follows:

13 24-8-3. ~~An~~ Any inmate released pursuant to § 24-8-1 shall be confined in the institution  
14 from which released or some other suitable place of confinement approved by the warden. Such  
15 confinement shall be for such periods of time that such inmate is not actually working at his or  
16 her employed job, seeking employment, or ~~engaged~~ engaging in a vocational training or other  
17 educational program.

18 Section 37. That § 24-8-6 be amended to read as follows:

19 24-8-6. The failure of an inmate to report to or return from planned employment, the seeking  
20 of employment, or vocational training ~~shall be considered as an~~ constitutes escape, and such  
21 inmate shall be ~~tried~~ charged therefor.

22 Section 38. That § 24-8-9 be amended to read as follows:

23 24-8-9. The warden shall place all earnings in the inmate's account and make disbursements  
24 therefrom in the priority set forth below:



- 1 (1) The board and room charges of the inmate;
- 2 (2) Necessary travel expenses and other incidental expenses of the inmate related to ~~his~~  
3 the inmate's release program;
- 4 (3) ~~Assist in the support~~ Support of the inmate's legal dependents;
- 5 (4) Payments on fines and restitution;
- 6 (5) ~~The inmate shall have the discretion of directing payments to be made upon proper~~  
7 proof Payments of personal debts and obligations upon proper proof and at the  
8 discretion of the inmate;
- 9 (6) The balance, if any, to be retained in the inmate's account and paid to the inmate  
10 upon parole or discharge.

11 Section 39. That § 24-8-9.1 be amended to read as follows:

12 24-8-9.1. No ~~prisoner~~ inmate engaged in work-release activities may drive or operate a  
13 motor vehicle unless ~~he~~ the inmate has established to the satisfaction of the sheriff or warden  
14 that ~~he~~ the inmate is in compliance with § 32-35-113.

15 Section 40. That § 24-8-10 be amended to read as follows:

16 24-8-10. The earnings of inmates under this chapter ~~shall~~ are not ~~be~~ subject to garnishment,  
17 attachment, or execution either in the hands of the employer or an agent authorized to hold or  
18 transmit such moneys.

19 Section 41. That § 24-13-4 be amended to read as follows:

20 24-13-4. At the first meeting in each year, the board shall select one of its members as  
21 ~~chairman~~ chair. The board shall meet at the times and places prescribed by its rules and  
22 whenever called together by the ~~chairman~~ chair.

23 Section 42. That § 24-13-4.2 be amended to read as follows:

24 24-13-4.2. The ~~chairman~~ chair of the board may designate individual parole board members

1 as hearing officers who may conduct hearings, hear applications, take testimony, and make  
2 recommendations to the board regarding the granting, denial, revocation, rescission, or an  
3 administrative continuance of a parole. The recommendation shall be in writing and reviewed  
4 by the board or a panel of the board who may adopt, modify, or reject the recommendations.

5 Section 43. That § 24-13-4.3 be amended to read as follows:

6 24-13-4.3. The ~~chairman~~ chair of the board may designate panels of two or more board  
7 members to conduct hearings, hear applications, take testimony, and take final action regarding  
8 the granting, denial, revocation, rescission, or an administrative continuance of a parole.

9 Section 44. That § 24-13-4.4 be amended to read as follows:

10 24-13-4.4. The decisions made by a panel of two or more board members are not appealable  
11 to the Board of Pardons and Paroles. Panels as designated by the ~~chairman~~ chair shall exercise  
12 the same authority and assume the same responsibilities as the full Board of Pardons and Paroles  
13 in those actions that panels are authorized to take pursuant to § 24-13-4.3.

14 Section 45. That § 24-13-4.6 be amended to read as follows:

15 24-13-4.6. No recommendation for the commutation of a sentence or for a pardon ~~other than~~  
16 including an exceptional pardon authorized by § 24-14-8, may be made by less than the majority  
17 vote of all members of the Board of Pardons and Paroles.

18 Section 46. That § 24-13-7 be amended to read as follows:

19 24-13-7. Pursuant to chapter 1-26, the Board of Pardons and Paroles may promulgate  
20 procedural rules for the effective enforcement of chapters 24-13 to 24-15, inclusive, and for the  
21 exercise of powers and duties conferred upon it. Additionally, the Board of Pardons and Paroles  
22 may utilize the following standards in granting or denying paroles or in assisting inmates in an  
23 assessment of their rehabilitation needs:

24 (1) The inmate's personal and family history;

- 1 (2) The inmate's attitude, character, capabilities, and habits;
- 2 (3) The nature and circumstances of the inmate's offense;
- 3 (4) The number, nature, and circumstances of the inmate's prior offenses;
- 4 (5) The successful completion or revocation of previous probation or parole granted to
- 5 the inmate;
- 6 (6) The inmate's conduct in the institution, including efforts directed towards
- 7 self-improvement;
- 8 (7) The inmate's understanding of his or her own problems and ~~his~~ the willingness to
- 9 work towards overcoming them;
- 10 (8) The inmate's total personality as it reflects on the possibility that ~~he~~ the inmate will
- 11 lead a law-abiding life without harm to society;
- 12 (9) The inmate's family and marital circumstances and the willingness of the family and
- 13 others to help the inmate upon release on parole from the institution;
- 14 (10) The soundness of the parole program and whether it will promote the rehabilitation
- 15 of the inmate;
- 16 (11) The inmate's specific employment and plans for further formal education or training;
- 17 (12) The inmate's plan for additional treatment and rehabilitation while on parole;
- 18 (13) The effect of the inmate's release on the community;
- 19 (14) The effect of the inmate's release on the administration of justice; and
- 20 (15) The effect of the inmate's release on the victims of crimes committed by the inmate.

21 Neither this section or its application may be the basis for establishing a constitutionally  
22 protected liberty, property, or due process interest in any prisoner.

23 Section 47. That § 24-14-1 be amended to read as follows:

24 24-14-1. The Governor may, by executive order, delegate to the Board of Pardons and

1 Paroles the authority to hear applications for pardon, commutation, reprieve, or remission of  
2 fines and forfeitures, and to make its recommendations to ~~him~~ the Governor.

3 Section 48. That § 24-14-2 be amended to read as follows:

4 24-14-2. The term, "clemency", means either a pardon, commutation, reprieve, or remission  
5 of a fine or forfeiture.

6 Section 49. That § 24-14-3 be amended to read as follows:

7 24-14-3. The applicant shall, upon notice of hearing from the board for clemency  
8 consideration, serve the attorney who prosecuted the person applying for clemency, or ~~his~~ the  
9 attorney's successor in office, a notice of the hearing ~~thereon~~, at least fifteen days before it  
10 considers the application.

11 Section 50. That § 24-14-5 be amended to read as follows:

12 24-14-5. The Governor may submit an application for clemency to the Board of Pardons and  
13 Paroles for its recommendation. The Governor may, by executive order, delegate to the board  
14 the authority to consider applications for clemency and make recommendations to ~~him~~ the  
15 Governor. The Governor is not bound to follow a any recommendation returned by the board.

16 Section 51. That § 24-15-1 be amended to read as follows:

17 24-15-1. If a defendant is sentenced to the state penitentiary, the Department of Corrections  
18 shall develop a file which shall contain a complete history of ~~the defendant~~ that person. The  
19 executive director of the Board of Pardons and Paroles shall generate an adequate case history  
20 of each inmate of the state penitentiary to enable ~~him~~ the executive director to make  
21 recommendations to the Board of Pardons and Paroles. The case history shall be transferred and  
22 kept as a permanent record of the Department of Corrections, solely for the proper supervision  
23 of the inmate by the Department of Corrections and as a guide to ~~his~~ the inmate's needs. Except  
24 for the information authorized for release pursuant to § 24-2-20, ~~such file shall not be inspected~~

1 ~~by anyone~~ no person other than members of the Board of Pardons and Paroles, its executive  
2 director, the secretary of corrections ~~and~~, or any person specifically delegated for such access  
3 by the secretary of corrections, may inspect such file unless otherwise ordered by a circuit court.

4 Section 52. That § 24-15-1.1 be amended to read as follows:

5 24-15-1.1. Parole is the discretionary conditional release of an inmate from actual  
6 penitentiary custody before the expiration of ~~his~~ the inmate's term of imprisonment. The  
7 prisoner remains an inmate under the legal custody of the Department of Corrections until the  
8 expiration of ~~his~~ the inmate's term of imprisonment. A prisoner is not required to accept a  
9 conditional parole. A prisoner is never entitled to parole. However, parole may be granted if in  
10 the judgment of the Board of Pardons and Paroles granting a parole would be in the best  
11 interests of society and the prisoner.

12 Neither this section or its application may be the basis for establishing a constitutionally  
13 protected liberty, property, or due process interest in any prisoner.

14 Section 53. That § 24-15-2 be amended to read as follows:

15 24-15-2. The executive director of the Board of Pardons and Paroles in preparing each case  
16 history shall:

- 17 (1) Adopt and implement a procedure by which a report shall be completed to contain  
18 the life history of each inmate;
- 19 (2) Receive from the Department of Corrections a copy of the true record of each inmate  
20 which specifies each infraction of rules and the disciplinary action taken; and
- 21 (3) Enlist the services of any sheriff, state's attorney, circuit judge, or other officer who  
22 may have knowledge concerning each inmate, or circumstances surrounding the  
23 commission of the crime for which ~~he~~ the inmate was sentenced, or ~~his~~ the inmate's  
24 previous history.

Section 54. That § 24-15-3 be amended to read as follows:

24-15-3. ~~If~~ Whenever any person becomes an inmate of the penitentiary, the director shall immediately establish in the record the date when the inmate will be eligible for consideration for parole. Such consideration for a parole eligibility date ~~shall be~~ is subject to change upon receipt of information regarding a change in the number of prior felony convictions or any subsequent felony convictions. Any inmate who is aggrieved by the established parole consideration eligibility date may apply for a hearing before the Board of Pardons and Paroles for a final determination of the true and correct parole consideration eligibility date. Between the date a person becomes an inmate of the penitentiary and the date on which such person becomes eligible for consideration for parole, the director shall complete the history of the inmate and shall study the life, habits, previous environment, and nature of the inmate to determine the advisability of recommending ~~him~~ the inmate for parole when ~~he~~ the inmate becomes eligible to be considered. At least ten days before the date of eligibility the director shall submit to the board the findings regarding the inmate.

If the victim of the inmate's crime requests in writing to be notified by the Board of Pardons and Parole when the inmate will be eligible for consideration for parole, the director shall send a notice at least ten days before the date of eligibility, of the inmate's parole consideration eligibility by first class mail to the address provided by the victim. The notice shall provide the inmate's parole consideration eligibility date; and the parole hearing date, and ~~it~~ the board shall advise the victim that he or she may be present at the hearing and may state his or her opinion regarding the possible parole of the inmate.

Section 55. That § 24-15-4 be amended to read as follows:

24-15-4. ~~A person~~ No inmate sentenced to life imprisonment is ~~not~~ eligible for parole by the Board of Pardons and Paroles.

Section 56. That § 24-15-5 be amended to read as follows:

24-15-5. ~~A person~~ An inmate is eligible for parole, subject to § 24-15-4, after deducting from ~~his~~ the inmate's sentence the statutory time granted for good conduct pursuant to § 24-5-1:

- (1) If convicted of a felony for the first time, when ~~he~~ the inmate has served one-fourth of the time remaining;
- (2) If convicted of a felony for the second time, when ~~he~~ the inmate has served three-eighths of the time remaining; or
- (3) If convicted of a felony three or more times, when ~~he~~ the inmate has served one-half of the time remaining.

Section 57. That § 24-15-8.1 be amended to read as follows:

24-15-8.1. The victim may request in writing to be notified by the Board of Pardons and Parole when an inmate who was convicted of committing the crime is granted parole, the inmate's parole is revoked, an offender is granted a clemency hearing, or clemency is recommended. The board shall send the notice by first class mail to the address provided by the victim. However, the board is not liable for any damages to the victim if ~~it~~ the board fails to mail the notice.

Section 58. That § 24-15-8.2 be amended to read as follows:

24-15-8.2. The victim or the sentencing judge may request in writing to be notified by the Department of Corrections if the inmate who was convicted of committing the crime escapes or is released from the penitentiary, or placed on regularly scheduled furlough or work release pursuant to chapter 24-2, 24-4, or 24-5, or is returned from escape or removed from work release. The Department of Corrections may either telephone the victim or the sentencing judge or send the notice by first class mail to the address provided by the victim or the sentencing judge. However, the Department of Corrections is not liable for any damages to the victim or

1 the sentencing judge if ~~it~~ the board fails either to notify the victim or the sentencing judge by  
2 telephone or to mail the notice.

3 Section 59. That § 24-15-10 be amended to read as follows:

4 24-15-10. If ~~his~~ an inmate's application for parole is denied, ~~an~~ the inmate may not again  
5 present ~~his~~ an application before the board for a period of eight months. A continuance of an  
6 application for parole ~~shall~~ is not be considered a denial. An application for clemency may not  
7 be heard for one year after the date of the judgment. If an application for clemency is denied,  
8 an inmate may not again present an application for clemency for a period of one year.

9 Section 60. That § 24-15-12 be amended to read as follows:

10 24-15-12. When the Board of Pardons and Paroles grants a parole to an inmate, the  
11 Department of Corrections shall provide the parolee, if ~~he is~~ not already provided for, with  
12 necessary clothing not exceeding a cost of one hundred dollars, with necessary traveling  
13 expenses not exceeding fifty dollars, and with transportation to the county of commitment or  
14 an equivalent distance.

15 Section 61. That § 24-15-13 be amended to read as follows:

16 24-15-13. ~~Parolees~~ Each parolee shall at all times be considered confined, in the legal  
17 custody of the Department of Corrections, and shall remain under conviction for the crime for  
18 which ~~they were~~ the parolee was convicted and sentenced.

19 Section 62. That § 24-15-15 be amended to read as follows:

20 24-15-15. The Board of Pardons and Paroles; may, ~~in its~~ the board's discretion, permit a  
21 parolee to leave this state and go to any other state, if satisfied that suitable employment or  
22 beneficial occupation of the parolee's time has been secured in the other state where ~~he~~ the  
23 parolee will be free from criminal influences, and that a parole agency or department of the  
24 other state will undertake supervision of the parolee within the other state in conformity with



1 the laws of South Dakota relating to parolees. The parolee ~~shall be~~ is subject to all the laws of  
2 South Dakota relating to parolees, in the same manner and to the same extent as if ~~he~~ the parolee  
3 had not been permitted to leave this state.

4 Section 63. That § 24-15-16 be amended to read as follows:

5 24-15-16. Nothing in this chapter ~~shall affect~~ affects the authority of the Governor to enter  
6 into compacts with other states, through their duly constituted authorities, for reciprocal  
7 supervision of persons placed on probation or released on parole and for the reciprocal return  
8 of such persons to the contracting states for violation of the terms of their parole or probation.

9 Section 64. That § 24-15-20 be amended to read as follows:

10 24-15-20. The executive director of the Board of Pardons and Paroles may issue an order  
11 to show cause why parole should not be revoked whenever ~~he~~ the executive director or the  
12 board is satisfied that:

- 13 (1) A parolee is violating or has violated the regulations or restrictions ~~that are~~ placed  
14 upon ~~him~~ the parolee by the board;
- 15 (2) A parolee has failed to report ~~himself~~ to his or her assigned parole agent;
- 16 (3) A parolee has failed to answer inquiries made by a parole agent; or
- 17 (4) The purposes or objects of parole are not being served.

18 Section 65. That § 24-15-24 be amended to read as follows:

19 24-15-24. If the Board of Pardons and Paroles is satisfied that any provision of § 24-15-20  
20 has been violated, it may revoke the parole and reinstate the terms of the original sentence and  
21 conviction or it may modify conditions of parole and restore parole status. In addition, the board  
22 ~~is authorized to~~ may order the reduction of time in full or in part for good conduct granted under  
23 § 24-5-1. If the board does not find that the provisions of § 24-15-20 have been violated, ~~it~~ the  
24 board may restore the parolee to the original or modified terms and conditions of ~~his~~ parole.

1 Section 66. That § 24-15-29 be amended to read as follows:

2 24-15-29. In order to obtain reimbursement pursuant to § 24-15-28, the ~~chairman~~ chair of  
3 the board of county commissioners of the county shall present a claim on a voucher to be  
4 approved by the secretary of corrections for detention expenses paid by the county, not to exceed  
5 ~~forty~~ fifty dollars per day. When the voucher is presented to the state auditor, the state auditor  
6 shall examine it and if the claim is just and valid, the state auditor shall issue a warrant for  
7 payment to be made from funds appropriated for that purpose, and the state treasurer shall then  
8 pay the sum to the treasurer of the county.

9 Section 67. That § 24-15A-9 be amended to read as follows:

10 24-15A-9. The ~~chairman~~ chair of the board may designate individual parole board members  
11 as hearing officers who may conduct hearings pursuant to this chapter and chapters 24-13 and  
12 24-15, take testimony<sub>1</sub> and make recommendations to the board regarding the granting, denial,  
13 revocation, or rescission of a parole. The recommendation shall be in writing and reviewed by  
14 the board or a panel of the board who may adopt, modify<sub>1</sub> or reject the recommendations.

15 Section 68. That § 24-15A-10 be amended to read as follows:

16 24-15A-10. The ~~chairman~~ chair of the board may designate panels of two or more board  
17 members to conduct hearings pursuant to this chapter and chapters 24-13 and 24-15, take  
18 testimony<sub>1</sub> and take final action regarding the granting, denial, revocation, or rescission of a  
19 parole.

20 Section 69. That § 24-15A-14 be amended to read as follows:

21 24-15A-14. If a defendant is sentenced to prison, the department shall develop a file which  
22 shall contain a complete history of ~~the defendant~~ that person. Except for the information  
23 authorized for release pursuant to § 24-2-20, the record shall be a permanent record of the  
24 department, solely for the proper supervision of the inmate by the department and as a guide to

1 the inmate's needs. ~~The file may not be inspected by anyone~~ No person other than members of  
2 the board, its executive director, the secretary, and any person specifically delegated for such  
3 access by the secretary, may inspect the file unless otherwise ordered by a circuit court.

4 Section 70. That § 24-15A-28 be amended to read as follows:

5 24-15A-28. If the board is satisfied that any provision of § 24-15A-27 has been violated, it  
6 may revoke the parole and reinstate the terms of the original sentence and conviction or it may  
7 modify conditions of parole and restore parole status. In addition, the board may order the denial  
8 of credit for time served on parole. If the board does not find that the provisions of § 24-15A-27  
9 have been violated, ~~it~~ the board may restore the parolee to the original or modified terms and  
10 conditions of the parolee's parole.

11 Section 71. That § 24-15A-32 be amended to read as follows:

12 24-15A-32. Each inmate sentenced to a penitentiary term, except those under a sentence of  
13 life or death, or an indeterminate sentence which is not yet set to a term of years by the board,  
14 shall have an initial parole date set by the department. This date ~~will~~ shall be calculated by  
15 applying the percentage indicated in the following grid to the full term of the inmate's sentence  
16 pursuant to § 22-6-1. The following crimes or an attempt to commit, or a conspiracy to commit,  
17 any of the following crimes shall be considered a violent crime for purposes of setting an initial  
18 parole date: murder, manslaughter, rape, aggravated assault, riot, robbery, burglary in the first  
19 or second degree, arson, kidnapping, felony sexual contact as defined in §§ 22-22-7 and  
20 22-22-19.1, child abuse, felony sexual contact as defined in § 22-22-7.2, felony stalking as  
21 defined in §§ 22-19A-2 and 22-19A-3, photographing a child in an obscene act, felony assault  
22 as defined in § 22-18-26, felony simple assault as defined in § 22-18-1, commission of a felony  
23 while armed as defined in §§ 22-14-12 and 22-14-13.1, discharging a firearm at an occupied  
24 structure or motor vehicle as defined in § 22-14-20, discharging a firearm from a moving

1 vehicle as defined in § 22-14-21, and criminal pedophilia as defined in § 22-22-30.1:

2	Felony Convictions			
3	Felony Class	First	Second	Third
4	Nonviolent			
5	Class 6	.25	.30	.40
6	Class 5	.25	.35	.40
7	Class 4	.25	.35	.40
8	Class 3	.30	.40	.50
9	Class 2	.30	.40	.50
10	Class 1	.35	.40	.50
11	Violent			
12	Class 6	.35	.45	.55
13	Class 5	.40	.50	.60
14	Class 4	.40	.50	.65
15	Class 3	.50	.60	.70
16	Class 2	.50	.65	.75
17	Class 1	.50	.65	.75
18	Class B	1.0	1.0	1.0
19	Class A	1.0	1.0	1.0

20 Each inmate shall serve at least sixty days prior to parole release. ~~Inmates with life sentences~~  
21 ~~are not~~ No inmate with a life sentence is eligible for parole. An initial parole date through the  
22 application of this grid may be applied to a life sentence only after the sentence is commuted  
23 to a term of years. A Class A or B felony commuted to a number of years shall be applied to the  
24 Class 1 violent column of the grid.

25 Section 72. That § 26-11A-1.1 be repealed.

26 ~~—26-11A-1.1. The Department of Corrections may establish and operate a program in Custer~~  
27 ~~County, for the rehabilitation of selected adjudicated female juveniles. The program is named~~

1 ~~the Lamont Youth Development Center.~~

2 Section 73. That § 26-11A-1.3 be repealed.

3 ~~—26-11A-1.3. The Department of Corrections may establish and operate two youth forestry~~  
4 ~~camps in the Black Hills area of the State of South Dakota for the rehabilitation of selected~~  
5 ~~youthful offenders.~~

6 Section 74. That § 1-15-1.4 be amended to read as follows:

7 1-15-1.4. The Department of Corrections, under the direction and control of the secretary  
8 of corrections, shall govern the ~~state training school, the youth forestry camps, the Lamont~~  
9 ~~Youth Development Center~~ juvenile corrections programs established subject to § 26-11A-1,  
10 the state penitentiary, and other state correctional facilities, parole services, the Board of  
11 Pardons and Paroles, and such other agencies as may be created by statute, executive order, and  
12 administrative action and placed under the Department of Corrections.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

159J0083

## SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 3** - 01/21/2004

Introduced by: Senators Knudson, Albers, Dempster, Dennert, and Symens and  
Representatives Weems, Christensen, Davis, Hackl, Hanson, Hargens,  
Hundstad, Koistinen, McCoy, and Wick at the request of the Interim  
Committee on Property Tax Exemptions

1 FOR AN ACT ENTITLED, An Act to revise the criteria for congregate housing to be exempt  
2 from property taxation.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-4-9.3 be amended to read as follows:

5 10-4-9.3. Property owned by any corporation, organization, or society and used primarily  
6 for human health care and health care related purposes is exempt from taxation. Such  
7 corporation, organization or society ~~must~~ shall be nonprofit and recognized as an exempt  
8 organization under section 501(c)(3) of the United States Internal Revenue Code ~~of 1954~~, as  
9 amended, and in effect on January 1, ~~1986~~ 2004, and ~~may not have any~~ none of its assets may  
10 be available to any private interest. ~~Such~~ The property ~~may~~ shall be a ~~hospital, sanitarium~~ health  
11 care facility licensed pursuant to chapter 34-12, orphanage, mental health center or adjustment  
12 training center regulated under chapter 27A-5, ~~asylum, home, resort, congregate housing~~ or  
13 camp. ~~Congregate housing is health care related if it is an assisted, independent group living~~  
14 ~~environment operated by a health care facility licensed under chapter 34-12 which offers~~



~~residential accommodations and supporting services primarily for persons at least sixty-two years of age or disabled as defined under chapter 10-6A. Supporting services must include the ability to provide health care and must include a food service which provides a balanced nutrition program. Such health care~~ The facility ~~must~~ shall admit all persons for treatment consistent with the facility's ability to provide ~~medical~~ health care services required by the patient until ~~such~~ the facility is filled to its ordinary capacity and ~~must~~ conform to all applicable regulations of and permit inspections by the ~~South Dakota Department of Health~~ state as otherwise provided by law.

Section 2. That chapter 10-4 be amended by adding thereto a NEW SECTION to read as follows:

Any congregate housing facility owned by a corporation, organization, or society is exempt from certain property taxes, if the facility provides certain health care services and is recognized as an exempt nonprofit corporation, organization, or society under section 501(c)(3) of the United States Internal Revenue Code, as of January 1, 2004, and if none of its assets are available to any private interest. A congregate housing facility does provide health care services if the facility is an independent group-living environment operated and owned by a health care facility licensed pursuant to chapter 34-12 which offers a continuum of care, residential accommodations, and supporting services primarily for persons at least sixty-two years of age or disabled as defined pursuant to chapter 10-6A. Supporting services include the ability to provide health care and a food service that satisfies a balanced nutrition program. As part of the statement required by § 10-4-19, the owner of the congregate housing facility shall submit a statement to the county director of equalization listing the health cares services provided and method used to satisfy the balanced nutrition program.

In addition, no owner may apply for a property tax exemption for a congregate housing

1 facility constructed after July 1, 2004, unless the congregate housing facility:

2 (1) Consists of two or more individual housing units located within one structure; and

3 (2) Not more than twenty-five percent of the individual housing units exceed fifteen  
4 hundred square feet.

5 Section 3. That chapter 10-4 be amended by adding thereto a NEW SECTION to read as  
6 follows:

7 For the purposes of section 2 of this Act, the term, continuum of care, means the ability of  
8 a licensed health care facility to provide living accommodations to any resident living in a  
9 congregate housing facility owned by such health care facility. If the resident requires additional  
10 health care services, the health care facility shall have sufficient facilities to permit residents to  
11 move into another level of care. This section does not require such health care facility to  
12 necessarily offer services normally provided by a hospital.

13 Section 4. That § 10-4-12 be amended to read as follows:

14 10-4-12. If property owned by any health care organization or charitable, benevolent, or  
15 religious society described in section 2 of this Act and §§ 10-4-9 to 10-4-9.3, inclusive, other  
16 than agricultural land, is used partly by such health care organization or charitable, benevolent,  
17 or religious society for health care, charitable, benevolent, or religious purposes, and the  
18 remaining part is occupied, rented, or used for other than health care, charitable, benevolent, or  
19 religious purposes, ~~such the~~ portion of property as that is so occupied, rented, or used for other  
20 ~~than health care, charitable, benevolent, or religious~~ purposes, shall be taxed as other property  
21 of the same class is taxed. For the purpose of determining the value of the taxable portion of the  
22 property, the appraised value of the entire property shall be multiplied by the percentage of the  
23 entire property used for other than health care, charitable, benevolent, or religious purposes. The  
24 resulting value shall be multiplied by the percentage of time ~~such the~~ property is used for other



- 1 than health care, charitable, benevolent, or religious purposes. The resulting value shall be the
- 2 assessed value for taxation purposes.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

400J0318

## SENATE AGRICULTURE AND NATURAL RESOURCES COMMITTEE ENGROSSED NO. **SB 21** - 01/21/2004

Introduced by: The Committee on Agriculture and Natural Resources at the request of the  
Department of Agriculture

1 FOR AN ACT ENTITLED, An Act to revise certain provisions of the South Dakota Family  
2 Farm Act.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 47-9A-3.1 be amended to read as follows:

5 47-9A-3.1. The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to the cultivation of  
6 edible fruits, vegetables or mushrooms if such cultivation occurs within a greenhouse or other  
7 enclosed or semi-enclosed structure.

8 Section 2. That § 47-9A-3.2 be amended to read as follows:

9 47-9A-3.2. The restrictions of §§ 47-9A-1 and 47-9A-3 do not apply to facilities acquired  
10 by a corporation for the purpose of feeding poultry for the production of meat or eggs.

11 Section 3. That § 47-9A-5 be amended to read as follows:

12 47-9A-5. The restrictions of §§ 47-9A-1 and 47-9A-3 ~~shall~~ do not apply to agricultural land  
13 and land capable of being used for farming which:

14 (1) Was owned by a corporation as of July 1, 1974, including the normal expansion of  
15 such ownership at a rate not to exceed twenty percent, measured in acres, in any



1 five-year period; or

2 (2) Is leased by a corporation in an amount, measured in acres, not to exceed the acreage  
3 under lease to such corporation as of July 1, 1974, and the additional acreage required  
4 for normal expansion at a rate not to exceed twenty percent in any five-year period;  
5 and the additional acreage necessary to meet the requirements of pollution control regulations.

6 Section 4. That § 47-9A-6 be amended to read as follows:

7 47-9A-6. The restrictions provided in §§ 47-9A-1 and 47-9A-3 ~~shall~~ do not apply to a bona  
8 fide encumbrance taken for purposes of security.

9 Section 5. That § 47-9A-7 be amended to read as follows:

10 47-9A-7. The restrictions of §§ 47-9A-1 and 47-9A-3 ~~shall~~ do not apply to agricultural lands  
11 acquired by a corporation by process of law in the collection of debts; or by any procedure for  
12 the enforcement of a lien or claim thereon, whether created by mortgage or otherwise; ~~provided,~~  
13 ~~however, that all lands.~~ However, any land so acquired shall be disposed of within ten years  
14 after acquiring the title thereto, ~~and further provided that the.~~ In addition, no land so acquired  
15 ~~shall not~~ may be used for farming during the ten-year period except under a lease to a family  
16 farm unit, a family farm corporation or an authorized farm corporation. The aforementioned  
17 ten-year limitation period shall be deemed a covenant running with the title to the land against  
18 any corporate grantee or assignee or the successor of such corporation.

19 Section 6. That § 47-9A-8 be amended to read as follows:

20 47-9A-8. The restrictions of §§ 47-9A-1 and 47-9A-3 ~~shall~~ do not apply to gifts of  
21 agricultural lands, either by grant or devise, to any corporation organized under chapter 47-22.

22 Section 7. That § 47-9A-9 be amended to read as follows:

23 47-9A-9. The restrictions of §§ 47-9A-1 and 47-9A-3 ~~shall~~ do not apply to ~~a farm operated~~  
24 ~~for research or experimental purposes; provided, that any commercial sales from such farm shall~~

1 ~~be incidental to the research or experimental objectives of the corporation~~ any entity that  
2 engages in farming primarily for scientific, medical, research, or experimental purposes.  
3 However, any commercial sales from such farming shall be incidental to the scientific, medical,  
4 research, or experimental objectives of the entity.

5 Section 8. That § 47-9A-10 be amended to read as follows:

6 47-9A-10. The restrictions of §§ 47-9A-1 and 47-9A-3 ~~shall~~ do not apply to agricultural land  
7 operated by a corporation for the purpose of raising breeding stock for resale to farmers or  
8 operated for the purpose of growing seed, nursery plants, or sod.

9 Section 9. That § 47-9A-11 be amended to read as follows:

10 47-9A-11. The restrictions of §§ 47-9A-1 and 47-9A-3 ~~shall~~ do not apply to agricultural  
11 lands acquired by a corporation solely for the purpose of feeding livestock.

12 Section 10. That § 47-9A-12 be amended to read as follows:

13 47-9A-12. The restrictions of §§ 47-9A-1 and 47-9A-3 ~~shall~~ do not apply to agricultural land  
14 acquired by a corporation other than a family farm corporation or authorized farm corporation  
15 for immediate or potential use in nonfarming purposes. A corporation may hold such  
16 agricultural land in such acreage or such form of ownership as may be necessary to its nonfarm  
17 business operation; ~~provided, however, that.~~ However, pending the development of agricultural  
18 land for nonfarm purposes, such land may not be used for farming except under lease to a family  
19 farm unit, a family farm corporation or an authorized farm corporation, or except when  
20 controlled through ownership, options, leaseholds or other agreements by a corporation which  
21 has entered into an agreement with the United States of America pursuant to the New  
22 Community Act of 1968, (Title IV of the Housing and Urban Development Act of 1968, 42  
23 U.S.C. 3901-3914), as amended, or a subsidiary or assign of such a corporation.

24 Section 11. That § 47-9A-13 be amended to read as follows:

1        47-9A-13. The restrictions of §§ 47-9A-1 and 47-9A-3 ~~shall~~ do not apply to a family farm  
2        corporation or an authorized farm corporation.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

400J0222

## SENATE TAXATION COMMITTEE ENGROSSED NO. **SB 31** - 01/21/2004

Introduced by: The Committee on Transportation at the request of the Department of  
Revenue and Regulation

1 FOR AN ACT ENTITLED, An Act to clarify certain provisions that levy the fuel excise tax on  
2 biodiesel, biodiesel blends, and ethyl alcohol.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 10-47B-5 be amended to read as follows:

5 10-47B-5. A fuel excise tax is imposed on all motor fuel and special fuel that is removed  
6 from a terminal in this state at the rack or used at the terminal. This tax is not imposed if the fuel  
7 is withdrawn from a terminal for export by the consignee, if the consignee is specifically  
8 licensed to export fuel from this state, into the state which is indicated as the destination state  
9 on the bill of lading which was issued by the terminal operator for the fuel. This tax is not  
10 imposed if the fuel removed is ethyl alcohol or biodiesel which has been removed by a licensed  
11 blender or supplier, for resale over a terminal rack, is invoiced separately from gasoline, and is  
12 not sold as an ethanol blend biodiesel blend. The tax imposed shall be at the rate indicated in  
13 § 10-47B-4.

14 Section 2. That § 10-47B-6 be amended to read as follows:

15 10-47B-6. A fuel excise tax is imposed on all motor fuel or special fuel, except unblended



ethyl alcohol, or biodiesel imported into this state in the bulk cargo area of any motor vehicle, vessel rail car, or trailer by any means other than through a terminal located in this state, upon its entry into this state. The tax imposed shall be at the rate indicated in § 10-47B-4.

Section 3. That § 10-47B-9 be amended to read as follows:

10-47B-9. A fuel excise tax is imposed on unblended ethyl alcohol or biodiesel sold by an ethanol producer, supplier, importer, or blender unless the sale is made to a licensed supplier for resale, to a licensed blender, or to a licensed exporter for export to another state who is specifically licensed to export to that state. The tax imposed shall be at the rate set for motor fuel in § 10-47B-4.

Section 4. That § 10-47B-10 be amended to read as follows:

10-47B-10. A fuel excise tax is imposed on all motor fuel or special fuel which has been removed from a terminal in this state at the rack by a licensed exporter for which the bill of lading issued for the fuel by the terminal operator indicates a destination state other than South Dakota, and the fuel is later diverted by the exporter to a destination within this state for off-loading or is transferred or sold to another person within this state prior to off-loading in any destination state. This tax is not imposed if the fuel is ethyl alcohol or biodiesel, the exporter is also licensed as a blender or supplier, and the product is purchased and invoiced separately from gasoline and not as an ethanol blend. The tax imposed shall be at the rate set for motor fuel or special fuel in § 10-47B-4.

Section 5. That subdivisions (1B) and (39) of § 10-47B-3 be amended and that two NEW SUBDIVISIONS be added to read as follows:

(1B) ~~"Biodiesel blend," a blended special fuel containing a minimum of two percent by volume of biodiesel. Biodiesel means a renewable, biodegradable, mono alkyl ester combustible liquid fuel that is derived from agricultural plant oils or animal fats and~~

1 ~~that meets American Society For Testing and Materials Specification D 6751-02 for~~  
2 ~~Biodiesel Fuel (B100) Blend Stock for Distillate Fuels as in effect on December 31,~~  
3 ~~2002~~ fuel comprised of mono-alkyl esters of long chain fatty acids derived from  
4 vegetable oils or animal fats, designated B100, and meeting the requirements of the  
5 American Society of Testing and Materials D 6751 as of January 1, 2004;

6 (1C) "Biodiesel blend," a blended special fuel containing a minimum of two percent by  
7 volume of biodiesel;

8 (12A) "Ethyl alcohol," a fuel that has been denatured as prescribed in § 10-47B-166. This  
9 definition does not apply to § 10-47B-162 or 10-47B-166;

10 (39) "Special fuel," all combustible gases and liquids that are:

- 11 (a) Suitable for the generation of power in an internal combustion engine or  
12 motor; or  
13 (b) Used exclusively for heating, industrial, or farm purposes other than for the  
14 operation of a motor vehicle.

15 The term includes diesel fuel, fuel oil, heating fuel, biodiesel, all special fuel blends,  
16 and all kerosene products except K-1. The term does not include motor fuel, liquid  
17 petroleum gas, compressed natural gas, natural gas which is not compressed natural  
18 gas, compounds or blends of fuels which are prepared and used strictly as racing  
19 fuels in motor vehicles operated solely off of public highways in organized racing  
20 events. The term, special use fuel, is synonymous with the term, special fuel;

21



# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

400J0331

## SENATE HEALTH AND HUMAN SERVICES COMMITTEE ENGROSSED NO. **SB 51** - 01/21/2004

Introduced by: The Committee on Health and Human Services at the request of the  
Department of Human Services

1 FOR AN ACT ENTITLED, An Act to create the South Dakota Certification Board for Alcohol  
2 and Drug Professionals and to provide for its powers and duties.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. Terms used in this Act mean:

5 (1) "Board," the South Dakota Certification Board for Alcohol and Drug Professionals;  
6 and

7 (2) "Practitioner," a person certified under this Act in the practice of chemical  
8 dependency counseling or prevention services who holds himself or herself out to the  
9 public by any title or description of services which uses the words certified chemical  
10 dependency counselor or certified prevention specialist or derivatives thereof.

11 Section 2. That § 36-32-11 be amended to read as follows:

12 36-32-11. No person may represent himself or herself as a licensed or certified chemical  
13 dependency counselor (CCDC) or certified prevention specialist unless he the person is certified  
14 by the South Dakota ~~Chemical Dependency Counselor~~ Certification Board for Alcohol and Drug  
15 Professionals.



1       Section 3. There is hereby created the South Dakota Certification Board for Alcohol and  
2       Drug Professionals that consists of nine members. One member shall be a lay member and  
3       resident of the state; one member shall be an educator from an addiction studies postsecondary  
4       education program; four members shall be certified chemical dependency counselors in active  
5       practice within the state and broadly representing a cross section of the profession of chemical  
6       dependency counseling; one member shall be a certified prevention specialist; one member shall  
7       be an attorney licensed to practice law in the State of South Dakota; and one member shall be  
8       a certified practitioner who is an enrolled member of a tribe. This board replaces the functions  
9       previously performed by the South Dakota Chemical Dependency Counselor Certification  
10      Board, a private nonprofit entity doing business as the Certification Board for Alcohol and Drug  
11      Professionals.

12      Section 4. The Governor shall appoint the members to the board. Initial appointments to the  
13      board shall be staggered for terms of one, two, and three years, with three members appointed  
14      for one year, three members appointed for two years, and three members appointed for three  
15      years. Thereafter, appointments shall be for terms of three years beginning on the first day of  
16      July.

17      Section 5. The Governor may remove any member of the board for cause. If there is a  
18      vacancy on the board caused by the death, resignation, removal from the state of any member,  
19      or for any other reason, the Governor shall appoint a new member to serve the unexpired term.  
20      No member of the board may serve for more than two successive full terms.

21      Section 6. The initial meeting of the board shall occur at Pierre, South Dakota, within one  
22      month after the appointment of the ninth member. The board shall elect a chair, vice-chair, and  
23      a secretary-treasurer from its members. Thereafter the board shall elect officers annually. The  
24      board shall meet at least once a year at a place and time determined by the chair. However, a

majority of the board may call a meeting without the assent of the chair.

Section 7. The secretary of the board shall provide for taking and keeping the minutes of all board meetings.

Section 8. A majority of board members constitutes a quorum. A majority vote of those present constitutes a decision of the entire board.

Section 9. The board is within the Department of Human Services. The department shall provide all administrative functions other than those of the board member serving as secretary. The expenses of the department shall be paid from the account established in section 10 of this Act, on vouchers approved by the secretary of human services. The board shall submit an annual report and such records, information, and reports in the form and at such times as required by the secretary of human services.

Section 10. The board may accept any funds which may be made available to it from any source. All funds received by the board shall be paid to the state treasurer on or before the tenth day of the next month. The state treasurer shall keep the money in a separate account for the board. The money in that account is continuously appropriated to the board for administering and enforcing this Act. The board may expend funds for administrative, consultant, secretarial, clerical, and stenographic services for the board. No expense may be incurred by the board exceeding the total money collected by the board under the provisions of this Act. The board shall transfer preexisting funds of the South Dakota Chemical Dependency Counselor Certification Board the entity doing business as the Certification Board for Alcohol and Drug Professionals into the account established in this Act.

Section 11. The board members shall be paid pursuant to § 3-9-2.

Section 12. No member of the board is civilly liable for any act taken while acting within the scope of the member's official duties as a board member.

Section 13. The board shall:

- (1) Through its policies and activities, and by rules promulgated pursuant to chapter 1-26, establish standards for, and promote, the qualified practice of chemical dependency prevention and counseling services;
- (2) Be responsible for all disciplinary proceedings under this Act;
- (3) Establish, by rules promulgated pursuant to chapter 1-26, educational, training and competency, and ethical standards governing the examination and practice of practitioners under this Act;
- (4) Examine, or cause to be examined, for competency, eligible applicants, for certification to practice chemical dependency prevention and counseling services;
- (5) Issue certificates to those applicants who successfully complete the certification requirements and renew the certifications of those practitioners who continue to meet the certification standards of this Act;
- (6) Register, pursuant to rules promulgated pursuant to chapter 1-26, those applicants who successfully complete the certification requirements; and
- (7) Establish and collect, pursuant to rules promulgated pursuant to chapter 1-26, fees for certification, registration, examination, continuing education, certificate renewal, and reinstatement.

Section 14. The board may promulgate rules, pursuant to chapter 1-26, to provide fees for all examinations, certifications, recognitions, renewals, services, and charges authorized by this Act. The fees may not exceed the following maximums:

- (1) Application materials or portfolio reviews, twenty-five dollars;
- (2) Chemical dependency counselor certification application and examination fee, two hundred fifty dollars;

- 1 (3) Chemical dependency counselor certification retest fee, two hundred dollars;
- 2 (4) Chemical dependency counselor certification renewal fee, one hundred fifty dollars;
- 3 (5) Chemical dependency counselor certification level upgrade, one hundred fifty
- 4 dollars;
- 5 (6) Chemical dependency counselor replacement or duplicate certificate, fifteen dollars;
- 6 (7) Chemical dependency counselor certification replacement card, five dollars;
- 7 (8) Chemical dependency counselor trainee recognition fee, one hundred fifty dollars;
- 8 (9) Chemical dependency counselor trainee renewal fee, one hundred dollars;
- 9 (10) Chemical dependency counselor trainee replacement or duplicate certificate fee,
- 10 fifteen dollars;
- 11 (11) Prevention specialist certification application and examination fee, two hundred fifty
- 12 dollars;
- 13 (12) Prevention specialist certification retest fee, two hundred dollars;
- 14 (13) Prevention specialist certification renewal fee, one hundred fifty dollars;
- 15 (14) Prevention specialist replacement or duplicate certificate, fifteen dollars;
- 16 (15) Prevention specialist certification replacement card, five dollars;
- 17 (16) Prevention specialist trainee recognition fee, one hundred fifty dollars;
- 18 (17) Prevention specialist trainee renewal fee, one hundred dollars;
- 19 (18) Prevention specialist trainee replacement or duplicate certificate fee, fifteen dollars;
- 20 (19) Trainee intern replacement certificate, fifteen dollars;
- 21 (20) Trainee intern replacement certificate, fifteen dollars;
- 22 (21) Registration as a continuing education provider, twenty-five dollars; and
- 23 (22) Mailing labels charge, one hundred dollars.

24 Section 15. A chemical dependency counselor trainee may perform chemical dependency

1 counseling services so long as the trainee is working under the supervision of a certified  
2 chemical dependency counselor.

3 Section 16. A prevention specialist trainee may perform prevention services so long as the  
4 trainee is working under the supervision of a certified prevention specialist or certified chemical  
5 dependency counselor, level II or III.

6 Section 17. The board may use its own staff or employ certified chemical dependency  
7 counselors, certified prevention specialists, agents, or investigators to assist in the enforcement  
8 of this Act or any rule promulgated by the board. Any person violating the provisions of this Act  
9 may be enjoined from further violations by an action brought by the state's attorney of the  
10 county where the violations occurred or by an action brought by any citizen in the state. The  
11 attorney general, the board, or the state's attorney may apply to the circuit court for the county  
12 in which a violation of this Act is alleged to have occurred for an order enjoining or restraining  
13 the commission or continuance of the acts. The board may authorize a hearing examiner to  
14 conduct the hearing required to determine a violation of this Act.

15 Section 18. The board may, if it deems best for the enforcement of this Act or in the conduct  
16 of its duties, employ an attorney designated by the attorney general and subject to the  
17 supervision, control, and direction of the attorney general. The board shall fix and determine the  
18 compensation and period of service of the attorney who shall be paid out of the funds of the  
19 board.

20 Section 19. The board shall receive complaints from its members, consumers, third party  
21 carriers providing financial reimbursement for chemical dependency prevention or counseling  
22 services, or the public concerning a practitioner's professional practices. Each complaint  
23 received shall be logged by the secretary-treasurer recording the practitioner's name, name of  
24 the complaining party, date of the complaint, a brief statement of the complaint, and its ultimate

1 disposition. The board shall investigate each alleged violation of this Act. All disciplinary  
2 proceedings held under the authority of this Act shall be conducted in accordance with chapter  
3 1-26.

4 Section 20. The decision of the board to suspend or revoke a certification requires a majority  
5 vote of all the board members.

6 Section 21. If the board determines that any complaint is frivolous or clearly unfounded in  
7 fact, the board may dismiss the complaint and, by a separate and unanimous vote of the board,  
8 may expunge the complaint from the record of the certified practitioner.

9 Section 22. Any practitioner subject to this Act shall practice in accordance with the  
10 standards established by the board and is subject to the exercise of the disciplinary sanctions  
11 enumerated in section 24 of this Act if, after a hearing in the manner provided in chapter 1-26,  
12 the board finds that:

- 13 (1) A practitioner has employed or knowingly cooperated in fraud or material deception  
14 in order to obtain a certification to practice the profession, or has engaged in fraud  
15 or material deception in the course of professional services or activities;
- 16 (2) A practitioner has been convicted in any court of a felony;
- 17 (3) A practitioner has engaged in or permitted the performance of unacceptable patient  
18 care by the practitioner or by auxiliaries working under the practitioner's supervision  
19 due to any deliberate or negligent act or failure to act;
- 20 (4) A practitioner has knowingly violated any provision of this Act or board rules;
- 21 (5) A practitioner has continued to practice although the practitioner has become unfit  
22 to practice due to professional incompetence, failure to keep abreast of current  
23 professional theory or practice, physical or mental disability, or addiction or severe  
24 dependency upon or use of alcohol or other drugs which endanger the public by

1           impairing a practitioner's ability to practice safely;

2       (6)   A practitioner has engaged in lewd or immoral conduct in connection with the  
3           delivery of chemical dependency or prevention services to consumers;

4       (7)   A practitioner has or is employing or assisting an uncertified person to hold himself  
5           or herself out as a certified chemical dependency counselor or certified prevention  
6           specialist; or

7       (8)   A practitioner has engaged in false or misleading advertising.

8       No suspension or revocation may be based on a judgment as to therapeutic value of any  
9       individual treatment rendered, but only upon a repeated pattern or trend of treatment resulting  
10      in unacceptable results.

11      Section 23. The board may, in a disciplinary proceeding, order a practitioner to submit to  
12      a reasonable physical or mental examination if the practitioner's physical or mental capacity to  
13      practice safely is at issue. Failure to comply with a board order to submit to a physical or mental  
14      examination renders a practitioner liable to the summary revocation procedures described in  
15      section 25 of this Act.

16      Section 24. The board may impose any of the following sanctions, singly or in combination,  
17      if the board finds that a practitioner has violated any part of section 22 of this Act:

18      (1)   Revoke a practitioner's certification to practice for an indefinite length of time;

19      (2)   Suspend a practitioner's certification for a specific or indefinite length of time;

20      (3)   Censure a practitioner;

21      (4)   Issue a letter of reprimand;

22      (5)   Place a practitioner on probationary status and require the practitioner to report  
23           regularly to the board on the matters which are the basis for probation;

24      (6)   Limit the practitioner's practice to areas prescribed by the board and continue to



1           renew professional education until a satisfactory degree of skill has been attained in  
2           those areas which are the basis of the probation;

3       (7)   Require the practitioner to reimburse the board in an amount equal to the costs  
4           incurred for the investigation and disciplinary hearing.

5       The board may withdraw the probation if the board finds the deficiencies that resulted in  
6       disciplinary action have been remedied.

7       Certification shall remain in effect during the pendency of an appeal unless suspended under  
8       section 25 of this Act.

9       Section 25. The board may summarily suspend a practitioner's certification in advance of  
10      a final adjudication or during the appeals process if the board finds that a practitioner would  
11      represent a clear and immediate danger to the public health and safety if the practitioner were  
12      allowed to continue to practice. A practitioner whose certification is suspended under this  
13      section is entitled to a hearing before the board within twenty days after the effective date of the  
14      suspension. The practitioner may subsequently appeal the suspension to circuit court in  
15      accordance with chapter 1-26.

16      Section 26. Any practitioner whose certification or registration to practice has been  
17      suspended or revoked may be reinstated or a new certification or registration may be issued, as  
18      the case may be, if in the discretion of the board, such action is warranted. The board may  
19      require the applicant to pay all costs of the proceedings resulting in the applicant's suspension  
20      or revocation of certification or registration and reinstatement or new certification or  
21      registration. In addition, the board may, by rule promulgated pursuant to chapter 1-26, require  
22      a fee for reinstatement, not to exceed one hundred fifty dollars.

23      Section 27. In the prosecution of any person for violation of this Act, it is not necessary to  
24      allege or prove lack of valid certification. Proof of certification or registration is a matter of

1 defense to be established by the defendant.

2 Section 28. Nothing in this Act may be construed to limit the ongoing certification of any  
3 person at the level of certification and for the time period established under the former South  
4 Dakota Chemical Dependency Counselor Certification Board doing business as the Certification  
5 Board for Alcohol and Drug Professionals

6 Section 29. That subdivision (4) of § 34-20A-2 be amended to read as follows:

7 (4) "Chemical dependency counselor," a level II or III counselor certified by the South  
8 Dakota ~~Chemical Dependency Counselor~~ Certification Board, ~~Incorporated for~~  
9 Alcohol and Drug Professionals;

10 .

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

455J0381

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 62** - 01/21/2004

Introduced by: The Committee on State Affairs at the request of the Office of the Attorney General

1 FOR AN ACT ENTITLED, An Act to provide a procedure for handling certain complaints  
2 regarding open meeting requirements and to create an open meetings commission.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as  
5 follows:

6 If a complaint alleging a violation of chapter 1-25 is made pursuant to § 23A-2-1, the state's  
7 attorney shall take one of the following actions:

8 (1) Prosecute the case pursuant to Title 23A;

9 (2) Determine that there is no merit to prosecuting the case. Upon doing so, the state's  
10 attorney shall send a copy of the complaint and any investigation file to the attorney  
11 general. The attorney general shall use the information for statistical purposes and  
12 may publish abstracts of such information, including the name of the government  
13 body involved for purposes of public education; or

14 (3) Send the complaint and any investigation file to the South Dakota Open Meetings  
15 Commission for further action.



1       Section 2. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as  
2 follows:

3       Upon receiving a referral from a state's attorney, the South Dakota Open Meetings  
4 Commission shall examine the complaint and investigatory file submitted by the state's attorney  
5 and shall also consider signed written submissions by the persons or entities that are directly  
6 involved. Based on the investigatory file submitted by the state's attorney and any written  
7 responses, the commission shall issue a written determination on whether the conduct violates  
8 this chapter, including a statement of the reasons therefor and findings of fact on each issue and  
9 conclusions of law necessary for the proposed decision. The final decision shall be made by a  
10 majority of the commission members, with each member's vote set forth in the written decision.  
11 The final decision shall be filed with the attorney general and shall be provided to the public  
12 entity and or public officer involved, the state's attorney, and any person that has made a written  
13 request for such determinations. If the commission finds a violation of this chapter, the  
14 commission shall issue a public reprimand to the offending official or governmental entity.  
15 However, no violation found by the commission may be subsequently prosecuted by the state's  
16 attorney or the attorney general. All findings and public censures of the commission shall be  
17 public records pursuant to § 1-27-1. This Act is not subject to the provisions of chapter 1-26.

18       Section 3. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as  
19 follows:

20       The South Dakota Open Meeting Commission shall be comprised of five state's attorneys  
21 appointed by the attorney general. Each commissioner shall serve at the pleasure of the attorney  
22 general. A chair of the commission shall be chosen annually from the membership of the  
23 commission by a majority of its members.

24       Section 4. That chapter 1-25 be amended by adding thereto a NEW SECTION to read as

1 follows:

2       No member of the commission may participate as part of the commission or vote on any  
3 action regarding a violation of this chapter if that member reported or was involved in the initial  
4 investigation, is an attorney for anyone who reported or was involved in the initial investigation,  
5 or represents or serves as a member of the governmental entity about whom the referral is made.  
6 The provisions of this section do not preclude a commission member from otherwise serving  
7 on the commission for other matters referred to the commission.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

667J0290

SENATE STATE AFFAIRS COMMITTEE ENGROSSED

NO. **SB 63** - 01/21/2004

Introduced by: Senators McCracken, Bogue, and Dennert and Representatives Hunhoff, Engels, and Smidt at the request of the Code Commission

1 FOR AN ACT ENTITLED, An Act to provide additional criteria to send a promulgated rule  
2 back for further public hearing by the agency.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 1-26-4.7 be amended to read as follows:

5 1-26-4.7. The Interim Rules Review Committee may require an agency to revert to any step  
6 in the adoption procedure provided in § 1-26-4. The Interim Rules Review Committee may  
7 require an agency to hold public hearings in addition to those provided for in § 1-26-4 if, in the  
8 judgment of the committee:

9 (1) The substance of the proposed rule has been significantly rewritten from the  
10 originally proposed rule which was not the result of testimony received from the  
11 public hearing;

12 (2) The proposed rule needs to be significantly rewritten in order to accomplish the intent  
13 of the agency; ~~or~~

14 (3) The proposed rule needs to be rewritten to address the recommendations or  
15 objections of the Interim Rules Review Committee;



1       (4) The proposed rule is not a valid exercise of delegated legislative authority;

2       (5) The proposed rule is not in proper form;

3       (6) The notice given prior to the proposed rule's adoption was not sufficient to give  
4       adequate notice to persons likely to be affected by the proposed rule;

5       (7) The proposed rule is not consistent with the expressed legislative intent pertaining  
6       to the specific provision of law which the proposed rule implements; or

7       (9) The proposed rule is not a reasonable implementation of the law as it affects the  
8       convenience of the general public or persons likely affected by the proposed rule.

9       If the committee requires an agency to revert to any step in the adoption procedure pursuant  
10      to this section, the time limitations set by chapter 1-26 shall also revert to the same step.

# State of South Dakota

SEVENTY-NINTH SESSION  
LEGISLATIVE ASSEMBLY, 2004

580J0408

## SENATE JUDICIARY COMMITTEE ENGROSSED NO. **SB 66** - 01/21/2004

Introduced by: Senators Olson (Ed), Albers, Dempster, Earley, Ham-Burr, Reedy, and Sutton (Dan) and Representatives Olson (Mel), Adelstein, Hennies, Hunhoff, Sebert, Solum, and Thompson

1 FOR AN ACT ENTITLED, An Act to revise the definition of an abused or neglected child to  
2 include exposure to the manufacturing of methamphetamines.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That § 26-8A-2 be amended to read as follows:

5 26-8A-2. In this chapter and chapter 26-7A, the term, abused or neglected child, means a  
6 child:

7 (1) Whose parent, guardian, or custodian; has abandoned the child or has subjected the  
8 child to mistreatment or abuse;

9 (2) Who lacks proper parental care through the actions or omissions of the child's parent,  
10 guardian, or custodian;

11 (3) Whose environment is injurious to the child's welfare;

12 (4) Whose parent, guardian, or custodian fails or refuses to provide proper or necessary  
13 subsistence, supervision, education, medical care, or any other care necessary for the  
14 child's health, guidance, or well-being;





- 1       (5)   Who is homeless, without proper care, or not domiciled with the child's parent,  
2           guardian, or custodian through no fault of the child's parent, guardian, or custodian;
- 3       (6)   Who is threatened with substantial harm;
- 4       (7)   Who has sustained emotional harm or mental injury as indicated by an injury to the  
5           child's intellectual or psychological capacity evidenced by an observable and  
6           substantial impairment in the child's ability to function within the child's normal  
7           range of performance and behavior, with due regard to the child's culture;
- 8       (8)   Who is subject to sexual abuse, sexual molestation, or sexual exploitation by the  
9           child's parent, guardian, custodian, or any other person responsible for the child's  
10          care; ~~or~~
- 11      (9)   Who was subject to prenatal exposure to abusive use of alcohol or any controlled  
12          drug or substance not lawfully prescribed by a practitioner as authorized by chapters  
13          22-42 and 34-20B; or
- 14      (10) Whose parent, guardian, or custodian has knowingly exposed the child to an  
15          environment used for the manufacturing of methamphetamines.